COURT OF APPEALS
DECISION
DATED AND RELEASED

FEBRUARY 18, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2066-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

THOMAS F. WOODS, ROBERT E. WOODS, JAMES W. WOODS, JANE WOODS FOLEY, MICKEY J. MARSH, MICHAEL D. MARSH, PATRICK F. MARSH AND PEGGY L. KNEIB,

Plaintiffs,

v.

MARSHALL & ILSLEY TRUST COMPANY,

Defendant-Third-Party Plaintiff,

STEIGERWALDT LAND SERVICES, INC.,

Third-Party Defendant-Appellant,

ROBERT ANDERSON, D/B/A ROBERT ANDERSON PULPWOOD PRODUCTION,

Third-Party Defendant,

HERITAGE MUTUAL INSURANCE COMPANY,

Intervening Third-Party Defendant-Respondent.

APPEAL from a judgment of the circuit court for Oneida County: ROBERT E. KINNEY, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Steigerdwaldt Land Services, Inc., appeals a summary judgment declaring that its Heritage Mutual Insurance Company commercial general liability policy did not provide coverage for allegations against Steigerwaldt in Marshall & Ilsley Trust Company's third-party complaint.[1] Steigerwaldt argues that the trial court misinterpreted the completed operations coverage and misapplied the various exclusions to deny coverage. We disagree and affirm the judgment.

This action was commenced by various beneficiaries of a trust agreement. The principal defendant, M&I, administered the trust. One of the assets the trust managed was a parcel of forested lakefront property on Lake Tomahawk. The beneficiaries claim that areas of this and other forested trust properties were negligently logged off and clear-cut.

M&I retained Steigerwaldt to plan and supervise the harvest and Robert Anderson Pulpwood Production to do the actual timber harvesting. M&I claimed that any alleged damages were caused by Steigerwaldt's negligence, which planned and supervised the timber harvest, and Anderson, which conducted the timber harvest. M&I further alleged that Steigerwaldt was negligent in connection with forestry consulting and appraisal services provided to defendant trust company and breached its duties to plaintiffs and defendant trust company.

M&I's third-party complaint against Steigerwaldt alleged:

> [T]he defendant Trust Company employed a forestry manager pursuant to an agreement that provided for

[1] This is an expedited appeal under RULE 809.17, STATS.

> compensation to the forestry manager on a basis of a percentage of the wood harvested and that said contractual arrangement was not standard industry practice, and contributed to excessive harvesting of timber which substantially decreased the recreational value of certain properties managed by the defendant Trust Company and owned by the trust.
>
> [T]he logging ... was imprudent, excessive and harmful, and was ... done ... for the benefit of the forestry company.

Steigerwaldt was insured by a commercial general liability policy with Heritage. Heritage's policy provides that it "will pay those sums that the insured becomes legally obligated to pay as damages because of **bodily injury or property damage** to which this insurance applies." It also states that various provisions restrict coverage and directs the insured to read the entire policy to determine coverage. The trial court concluded that various policy exclusions barred coverage and entered summary judgment in favor of Heritage. Steigerwaldt appeals.

When reviewing summary judgment, we apply the standard set forth in § 802.08(2), STATS., in the same manner as the circuit court. ***Kreinz v. NDII Secs. Corp***., 138 Wis.2d 204, 209, 406 N.W.2d 164, 166 (Ct. App. 1987). We have detailed the procedure in numerous cases, including ***Grams v. Boss,*** 97 Wis.2d 332, 338, 294 N.W.2d 473, 476-77 (1980), and do not repeat it here. Determining whether a policy provides coverage is a question of law we review de novo. ***Grube v. Daun,*** 173 Wis.2d 30, 72, 496 N.W.2d 106, 122 (Ct. App. 1992).

To determine whether an insurer is obligated to assume the defense of a third-party suit, it is necessary to determine whether the complaint alleges facts that if proven would give rise to liability under the terms and conditions of the policy. ***Sola Basic Indus. v. USF&G***, 90 Wis.2d 641, 646, 280 N.W.2d 211, 213 (1979). Interpretation of insurance policies is governed by the general principles of contract construction. ***Sprangers v. Greatway Ins. Co***., 182 Wis.2d 521, 536, 514 N.W.2d 1, 6 (1994). The objective is to carry out the intention of the parties as evidenced by the plain policy language. ***Id.*** We interpret policy language to mean what a reasonable person in the position of the insured would have understood the words to mean. ***Id.***

Steigerwaldt argues that it purchased coverage for the claims made in this action when he purchased "**products-completed operations**" coverage with an aggregate limit of $1,000,000. Steigerwaldt argues that the work that Steigerwaldt is claimed to have done negligently, forest services, is listed on the declarations page. It contends that the completed operations definition providing coverage for property damage to completed operations "arising out of your work" creates an ambiguity when read with other exclusions. We disagree.

Under the facts alleged, we conclude that the "**products-completed operations**" coverage would not apply. The policy contains the following definitions:

15. **"Your work"** means:

a. Work or operations performed by you or on your behalf ....

11. a. "Products - completed operations.1 hazard" includes all **bodily injury** and **property damage** occurring away from premises you own or rent and arising out of **your product** or **your work** except:

(1) Products that are still in your possession; or

(2) Work that has not yet been completed or abandoned.

The "**products-completed operations**" definition refers to liability for accidental bodily injury or property damage following the completion of work. The pleadings allege no accidental injury or damage. Also, the excessive harvesting is alleged to have occurred well before the timber harvest was completed. The entire thrust of the complaint is that the logging should have been completed or abandoned well before it resulted in the excessive harvest. Under the facts alleged in the complaint, we reject Steigerwaldt's contention that the "**products-completed operations**" definition creates an ambiguity to confer coverage.

We further conclude that the "contractual liability" exclusion bars coverage. The policy further states:

2. **Exclusions**.

This insurance does not apply to:

....

b. Bodily injury or property damage for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) Assumed in a contract or agreement that is an **insured contract**; or

(2) That the insured would have in the absence of the contract or agreement.

Liability policies are intended to cover tort liability, not contractual obligations the insured has chosen to assume. In ***Nelson v. Motor Tech, Inc.,*** 158 Wis.2d 647, 650, 462 N.W.2d 903, 904 (Ct. App. 1990), we interpreted a similar exclusion. We stated: "The above provision clearly excludes coverage for incidents involving purely contractual liabilities. The policy covers incidents only if there is liability independent of the contract."

In ***Bulen v. West Bend Mut. Ins. Co***., 125 Wis.2d 259, 371 N.W.2d 392 (Ct. App. 1985), we explained the purpose of a comprehensive general liability policy:

The risk intended to be insured is the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than to the product or completed work itself, and for which the insured may be found liable. ... ***The coverage is for tort liability for***

> ***physical damages to others and not for contractual liability of the insured for economic loss because the product or completed work is not that for which the damaged person bargained.***

Id. at 264-65, 371 N.W.2d at 394 (emphasis added) (quoting ***Weedo v. Stone-E-Brick, Inc.***, 405 A.2d 788, 791 (N.J. 1979)).

We conclude that exclusion 2.b bars coverage. The complaint alleges that Steigerwaldt's alleged liability arises out of its failure to provide forestry services and that it entered into a fee agreement that contributed to the excessive logging. It also alleges that Steigerwaldt negligently performed its duties of planning and supervising the timber harvest and that damages resulted from an excessive harvest. Steigerwaldt's obligations arise out of its agreement with M&I to provide forestry services. Because the complaint alleges the damages resulted from Steigerwaldt's failure to carry out its contractual obligation to properly plan and supervise the timber harvest, Steigerwaldt's alleged liability would result from its contractual obligations within the meaning of exclusion 2.b.[2] Because we conclude that exclusion 2.b applies, we need not discuss other exclusions.[3]

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.

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[2] Steigerwaldt's brief does not claim that exceptions (1) or (2) to 2.b apply.

[3] Therefore, we do not address the applicability of other exclusions, including the professional services exclusion. *See* ***Jones v. Sears Roebuck & Co***., 80 Wis.2d 321, 331, 259 N.W.2d 70, 74 (1977) ("This court will not, through contract construction of one exclusion, find coverage of injuries which are unambiguously excluded by another.").